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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/554,309

08/28/2006

Hans Gygax

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2653

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EXAMINER

O'HARA, BRIAN M

ART UNIT

PAPER NUMBER

3644

NOTIFICATION DATE

DELIVERY MODE

09/15/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@calfee.com
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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/554,309	GYGAX, HANS	
	Examiner	Art Unit	
	BRIAN M. O'HARA	3644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1 and 3-10.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/B. M. O./
Examiner, Art Unit 3644

/JOSHUA J MICHENER/
Primary Examiner, Art Unit 3644

Continuation of 11. does NOT place the application in condition for allowance because: On page 6 line 10 through Page 7 Line 4 of the remarks filed 08/29/2011 applicant argues that the Firner reference does not disclose dimensions of the airplane cabin and therefore cannot anticipate an orthorhombic space for receiving a person lying on a stretcher. These arguments are not commensurate with the scope of the rejection which is an obviousness type rejection. Therefore, one of ordinary skill in the art could look at the figures of Firner and find it obvious that a person lying on a stretcher could fit within the cabin. On Page 7 lines 5-8, applicant argues that a stretcher could not fit because bars 20 and 21 would obstruct passage of the stretcher. A stretcher could fit next to or above bar 20. Both bars 20 and 21 sit relatively low in the cabin (See Fig. 1). Additionally, most the rear portion of the fuselage appears to be unfilled volume which could accommodate a person on a stretcher. On Page 7 Lines 9-14 applicant argues that placing a stretch in Firner would result in an unstable awkward position and therefore is not suitable for a stretcher. This argument is not found to commensurate with the scope of the claims since the stretcher is not claimed as laying flat. On Page 7 Lines 12-14 applicant argues that two adjacent passengers seats could not fit within the cabin of Firner along with a stretcher. This argument is not seen to be commensurate with the scope of the claims since the seats are not claimed to be side-by-side. ON page 7 Line 20 through page 8 Line 8 applicant argues that designing the light weight airplane does not simply involve substituting lighter materials. This argument is not commensurate with the scope of the claims since the non-conventional design which results in a lightweight aircraft has not been claimed.